



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, MNDC, MNR, OLC, PSF, RP, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a multiple of orders:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlords make emergency repairs for health or safety reasons;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for the cost of emergency repairs;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- an order that the landlords provide services or facilities required by the tenancy agreement or law;
- an order that the landlords make repairs to the unit, site or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlords for the cost of the application.

One of the landlords and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The tenant who did not testify is the mother of the other tenant. The tenant advised that his mother is hard of hearing and did not participate in the hearing.

At the commencement of the hearing I advised the parties that all of the applications made by the tenants may not be sufficiently related to the primary application, being the application for an order cancelling a notice to end the tenancy for landlord's use of property.

The tenants have provided evidentiary material that includes digital evidence, and the landlord agrees all evidence has been provided to the landlords. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, specifically relating to good faith intent?

Background and Evidence

The landlord testified that this tenancy began 5 or 6 years ago as a fixed term which expired in 2014 and reverted to a yearly tenancy. A copy of the tenancy agreement has not been provided. Rent in the amount of \$1,100.00 per month is payable on the 1st day of each month. The tenants had previously rented a different unit from the landlords and paid a security deposit in the amount of \$500.00 which was transferred to this tenancy and is still held in trust by the landlords. The rental unit is a large single family dwelling, and the tenants still reside in the rental unit, however the basement is not a part of the tenancy and is vacant.

The landlord further testified that on November 1, 2016 the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided by the tenants. It is dated December 1, 2016 and contains an effective date of vacancy of January 31, 2017. The landlord testified that the date it is signed is incorrect and should read November 1, 2016. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). It was served personally to one of the tenants by the landlord's son, who also collects rent for the landlords.

The landlord further testified that her son got married a year ago and he and his wife currently reside with the landlords and want to move into the rental unit. The landlords have 12 rental units, all of which are legal and currently occupied, but because this is the biggest house, they want to move into this one. The landlords' son will be doing some renovations but doesn't yet know what needs to be done before moving in.

The landlord also testified that after the notice to end the tenancy was served the tenants gave the landlords a list of required repairs. The landlords were away from December 20, 2016 till January 5, 2017 and received the list of repairs upon their return. The landlords sent a contractor to look at the electric heat, but the contractor said the heat was working fine.

The tenants have not paid any rent for November or December, 2016, and the landlords' compensation to the tenants is January's rent which has also not been paid, and the tenants are currently in arrears of rent the sum of \$2,200.00 for November and December, 2016.

When asked if the landlord was aware that double the monthly rent could be awarded to the tenants if the rental unit was not used for the stated purpose, the landlord stated that whatever I order will be fine.

The tenant testified that the landlord's testimony about a written tenancy agreement is totally fabricated and there never was a written tenancy agreement. The tenants moved into the rental unit in the fall or early winter of 2012.

The tenant further testified that the tenants received the 2 Month Notice to End Tenancy for Landlord's Use of Property, and the tenants dispute the landlords' good faith intent to use the property for the purpose set out in that notice.

The heat in the rental unit is not sufficient and the problem has drawn on for years. The tenants gave the landlords an ultimatum to fix the heat or rent wouldn't be paid, and the tenants believe that the notice to end the tenancy was issued for that reason; it was given right after the tenant gave the ultimatum to fix the heat or rent would not be paid.

In February, 2016 the landlord told the tenants that they would run a gas line for heat, but keeps putting it off. In October, 2016, being the start of the 5th winter with insufficient heat, the landlord who did not attend this hearing said he needed to speak with his contractor to look after the problem. In mid-October, the tenant spoke to the landlord again, who said he didn't ask the contractor to attend but said that he needed to talk to the contractor to verify details about going ahead with construction to install a gas line from the main road to the house to allow installation of a gas furnace. The tenant has spoken with the contractor but he has refused to attend at the rental unit.

About a month later, on November 18, 2016 the landlord who attended this hearing left a phone message for the tenants asking for November's rent cheque and post-dated cheques for another 4 or 5 months, which would have provided rent to the end of April, 2017. The tenant submits that asking for post-dated cheques for that long suggests that the landlords had no intent of using the rental unit. The tenant called the landlord on November 21, 2016 saying that rent would be paid when the heat was fixed, and the landlord tried to give the tenant the contractor's phone number and said that the contractor had attended but no one was home. The tenant advised that he already had the phone number and the contractor never attended even when he said he would. The day after the tenant served the Tenant's Application for Dispute Resolution the contractor called the tenant, attended and inspected, but didn't fix anything. He also talked about installing or converting the air conditioning to a heating unit for the main floor but wouldn't heat the basement.

The landlords are not permitted to rent the basement without getting a permit. In the spring of 2016 the landlord called the tenant asking if she could rent the basement to friends who would pay the utility bills and the tenants disagreed having already obtained confirmation from the City that a permit was required. The tenants have provided a copy of a letter from the City addressed to the landlords dated March 18, 2013 which requests that the landlords comply with the zoning and regulations regarding renting and obtaining a permit.

The tenant also testified that the landlords are experienced, but have chosen not to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but instead to serve a 2 Month Notice to End Tenancy for Landlord's Use of Property to achieve several objectives. The landlord also told the

tenants that they were paying too little for rent. The landlord wants to re-rent at a higher rate and rent out the basement knowing that there is less than a 1% vacancy rate for rentals in the City.

The tenant completed some renovations in another home owned by the landlords that were abandoned by a previous contractor. The tenant spoke to the contractor who advised that they were over budget and needed an additional \$5,000.00 or \$6,000.00. The landlords hired the tenant to finish the job and find new renters for a fee of \$2,000.00. The tenant did so, and the house was rented for \$1,200.00 per month. Those tenants bought a house and moved out after about a year and the landlords re-rented for \$1,800.00 per month.

The landlord also tried to give the tenants verbal notice to raise the rent in the spring of 2015. When the tenant told the landlord to put it in writing she got very upset and threatened to evict the tenants for renovations. The tenants had been paying rent in cash, but now by cheques, which also upset the landlord who requested cash only, and the tenants refused.

The landlord requested that the tenant get some estimates for repairing the heat, and the tenant did so, telling the landlord that the costs would be in the neighborhood of \$9,000.00 to \$13,000.00. Then the landlord tried to make it the tenants' responsibility.

The tenant also spoke to the landlord who did not attend this hearing and told him that the landlord who did attend this hearing was trying to evict the tenants. His response was, "That's not going to happen." Also, when the tenant served him with the hearing package for this hearing, he said, "What's this?" The landlords also have lots of temporary foreign workers, and the landlord suggested using the basement for them, but her husband also told the tenant that was not going to happen. The tenant does not believe that the other landlord is aware of the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant submits that the landlord wants to raise rent for a future tenant or provide housing for foreign workers.

In rebuttal, the landlord stated that she had only asked for November's rent cheque in the message she left for the tenants.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In the case of a 2 Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish good faith intent to use the rental unit for the purpose contained in the notice.

I have reviewed the evidentiary material of the tenants including the recordings. The landlord had rebutted that she had only asked for November's rent cheque in her message to the tenants in November. However, that is inconsistent with the recording, wherein the landlord requests November's rent and 4 or 5 post-dated cheques. Certainly if the landlord had any good faith

intent to use the property for the landlords' son, the landlord would have known that in November, given that her son got married a year ago, yet wanted rent cheques to the end of March or April.

The landlords have provided absolutely no evidence, and did not call any witnesses to verify the intent or the landlord's testimony of how or when the notice to end the tenancy was served. The landlord testified that the tenants complained about repairs required after the notice was served on November 1, 2016, and testified that the landlords were away from December 20, 2016 till January 5, 2017 and received the list of repairs upon their return.

I find that the landlord's testimony is unsubstantiated by any evidence, including the testimony that a written tenancy agreement was prepared for a fixed term. The landlord also testified that the landlords sent a contractor to look at the electric heat and the contractor said the heat was working fine, but the tenant disputes that and the landlord has provided no evidence to substantiate it.

I find that the opposite occurred; the landlord issued the notice to end the tenancy after the tenant refused to pay rent until the heat was repaired, both of which are contrary to the *Residential Tenancy Act*.

In the circumstances, I am not satisfied that the landlord has established such good faith intent. I hereby cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property and the tenancy continues.

The tenants' evidence shows that the landlords have not dealt with the heat issue. It is clear in the evidence and testimony that heating has been a big issue throughout the tenancy, and I order the landlords to repair the primary heating system immediately. This does not in any way prevent the tenants from making a further application for repairs if necessary.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent by that amount or may otherwise recovery it.

The hearing did not include testimony from either party with respect the balance of the tenants' application, and I dismiss those applications with leave to reapply.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 1, 2016 is hereby cancelled and the tenancy continues.

I hereby order the landlords to repair the primary heating system in the rental unit immediately. This in no way prevents the tenants from making a further application for repairs if required.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, as recovery of the filing fee for the cost of this application, and I order that the tenants be permitted to reduce rent by that amount or may otherwise recover it.

The balance of the tenants' application is hereby dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 20, 2017

Residential Tenancy Branch